



Intellectual Property Services

TRADE DRESS

Siam



Trade dress is the totality of elements in which a product or service is packaged or presented. These elements combine to create the whole visual image presented to customers and are capable of acquiring exclusive legal rights as a type of trademark or identifying symbol of origin. Because trade dress includes all factors making up the total image under which a product or service is presented to customers, it potentially covers almost all aspects of appearance. Things that have been held protectable under the category of trade dress include:

1. The shape and appearance of a product;
2. The shape and appearance of a container;
3. The cover of a book or magazine;
4. The layout and appearance of a business establishment such as a restaurant;
5. The theme and look of a line of greeting cards; and
6. The recognizable shape of an automobile.

To register a product's design, product packaging, color, or other trade dress for goods or services is based on: (1) functionality; and (2) distinctiveness.

To establish a superior right to unique trade dress, it must indicate or be distinctive towards the business or product. This is accomplished by showing that the public associates the trade dress with a particular source. Examples of a trade dress would involve the coloring, shape and or the packaging of the products.

Trade dress protection can be both broader than and complementary to copyright, patent and trademark protection.

The Indian Trademarks Act, 1999 provides registration of shape of goods, their packing and combination of colors. Trade dress registration secures to the owner of the trade dress the goodwill of the associated business and enables the consumers to distinguish among competing producers.



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